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CONSULTATION ON APPLYING SPECTRUM PRICING TO THE MARITIME AND AERONAUTICAL SECTORS

Virgin Atlantic welcomes the opportunity to respond to Ofcom's Consultation on Applying Spectrum Pricing to the Maritime and Aeronautical Sectors.

Virgin Atlantic is strongly opposed to the ill-conceived proposals as laid out in the consultation published by Ofcom on the 30 July 2008. This letter outlines the reasons we are opposed to the proposal. Due to the limited resources we have available to more fully address this consultation Ofcom should not consider the opinions herein as exhaustive. We also reserve the right to revise our response to any part of the consultation should we become aware of any new information or developments.

Whilst we agree that the Aeronautical Spectrum should be used as efficiently as possible, we do not believe that Administered Incentive Pricing (AIP) will make the use of spectrum more efficient and Ofcom have not been able to demonstrate this either. It would certainly, however, generate revenue for the UK treasury, which we believe is not an unintentional consequence. Above all safety must be of the highest priority. Ofcom must ensure that there is no detrimental impact on the 'Safety of Life' service that the aeronautical spectrum affords. Driving efficient use of spectrum and revenue generation should not undermine the requirement to protect 'Safety of Life'.

We request that Ofcom complies with the UK Government Consultation Process and that a Regulatory Impact Assessment is carried out. We fully support the position of IATA, the AEA and BATA on this matter and look forward to the response from Ofcom addressing the concerns raised by all affected stakeholders.

It has also come to our attention that during the consultation period changes have been announced regarding Ofcom's policy towards the use of spectrum by charitable organisations, namely, the RNLI. Whilst Virgin Atlantic supports any measures that the UK Government undertakes to support charitable causes, we feel that this throws the validity of the consultation into doubt and we would welcome Ofcom's consideration of this matter.

If Ofcom complies with its own mandate and follows government guidelines we anticipate that, in conjunction with the users, improvements to the use of the aeronautical spectrum can be achieved through means other than the application of AIP.

We understand Ofcom will consider and publish this response as a part of the consultation process.

Question 1: How should Ofcom manage the process of taking advice from users, regulators and government on efficient apportionment of AIP fees in the maritime and aeronautical sectors? Are any new institutional arrangements needed?

We expect all issues raised by Users, Regulators and Government during the consultation process to be adequately addressed by the Regulatory Impact Assessment. This process should ensure the stakeholders right to make representations on the regulatory impact assessment before Ofcom can initiate any formal proposals.

The UK Government Code of Consultation must be adhered to. The Cave Audit and the 2007 Forward Look must also be taken into account and any deviation from the recommendations in these reports justified.

Question 2: If you consider that our proposals for pricing ground station users for any spectrum would be likely to have a detrimental impact on safety, please let us know. In order for us to understand your assessment fully, it would be helpful if you could outline the mechanisms whereby this might happen.

The highest priority in aviation is safety. Anything that has, or potentially, has a negative impact on safety is never acceptable to the aviation community. Our ability to operate safely is dependant on access to clean, interference free radio spectrum.

Question 3: Do you have any evidence which indicates that AIP charged to ground stations could have a material detrimental impact on UK competitiveness?

If the cost of operating within UK airspace is increased, without reinvestment to facilitate infrastructure/technological improvement in return, then the UK aviation industry will be at a competitive disadvantage. As such costs are currently not levied in other states resulting in the cost of ATS increasing, users of this airspace in the UK will be placed at a competitive disadvantage thus undermining the competitiveness of UK aviation and wider economic disadvantages.

Question 4 : Taking into account the information available in this document, including that set out in Annex 5, our initial views on VHF radiocommunications licence fees and on the reference rates for bands in other uses, and any information you have about the organisations to whom we are proposing to charge fees, please provide any evidence that you think is relevant to us in considering the financial impact of the fees we intend to propose for VHF radiocommunications, or for other uses.

The application of AIP will be of significant detriment to the UK aviation industry and have wider economic impacts.

Additional costs in the aviation industry during the current economic downturn may result in the loss of jobs.

Question 5: Do you agree that there is little to be gained, in terms of economic efficiency, from charging AIP to WT Act licences for aircraft?

Charging AIP to WT Act Licences for aircraft would create competitive distortions as non-UK registered aircraft would be exempt. This would inflate the detrimental impact to UK aviation.

Question 6: Do you consider that we should discount fees for any particular user or type of user? Specifically, do you consider that there should be a discount for charities whose object is the safety of human life in an emergency?

No. Aeronautical spectrum is allocated to the aeronautical industry by international treaty for the purpose of 'safety of life' and is intended to pre-empt any emergency in the first instance. We believe that, as per the Cave Audit, the opportunity cost should be set at zero for the aeronautical spectrum

Question 7: Do you agree that Ofcom should apply AIP to ground stations' use of maritime and aeronautical VHF radiocommunications channels, to help manage growing congestion in current use and to ensure that the cost of denying access to this spectrum by potential alternative applications is faced by current users?

The UK, as a full ICAO member is obliged to assign the parts of the spectrum in question to the aeronautical sector. This is managed by the aeronautical sector in such a way as to maximise its potential. There is no case to suggest there is any 'denial of use' since the aeronautical spectrum is exclusively reserved by international treaty for use by the aeronautical sector and therefore cannot be utilized by any other potential users. Congestion within the aeronautical spectrum is in itself the overriding incentive encouraging the development of more efficient technology and usage currently being developed by industry and regulators. Therefore revenue generated through AIP, if not financially supporting these sought after 'efficiencies', will serve as nothing more than another thinly veiled tax, further reducing the finance available to invest in improvements to the usage of spectrum which the aviation community are already undertaking.

Question 8: Do you agree with our initial view that it would be appropriate to apply a pricing system similar to that already existing for Business Radio licences to maritime and aeronautical VHF communications? If not, what are your reasons for proposing that we should develop a fee structure for maritime and aeronautical VHF channels which is distinct from that already established for Business Radio?

No, absolutely not. The use of spectrum in the Aeronautical sector is above all a matter of safety. We support the continued oversight of the usage of available spectrum by the CAA. Business Radio is a commercial use of the spectrum and not allocated globally according to international treaties and obligations. Aeronautical Spectrum is a global resource and Ofcom will only disadvantage the UK aviation and competitiveness were its proposals accepted

Question 9: Are there any short term reasons specific to the sector(s) why it would be inappropriate to apply fees from April 2009?



Virgin Atlantic believes that Ofcom has rushed the consultation process and has not provided the industry with satisfactory information regarding the justification and possible consequences associated with the implementation of AIP. We do not believe that Ofcom has fully adhered to the Government's code of consultation, conducted an impact assessment nor, seemingly, has it actively sought to ensure all affected stakeholders were made aware of the various stages of the consultation process in a timely manner.

Ofcom *appears* to be intent on doing just as it pleases with little more than token regard for safety, logic, reason or without fully investigating the implications of implementing spectrum pricing and justifying its logic. Virgin Atlantic believes it is inappropriate to apply fees from 2009.

Question 10: Ofcom would welcome stakeholders' views on the factors which should be taken into account when apportioning fees between individual users of radars and racons.

No. Aeronautical spectrum is allocated to the aeronautical industry by international treaty for the purpose of 'safety of life' and is intended to pre-empt any emergency in the first instance. We believe that, as per the Cave Audit, the opportunity cost should be set at zero for the aeronautical spectrum.

Question 11: Do you agree with our initial view that a reference rate of £126k per 1 MHz of national spectrum for L band and S band radar spectrum would achieve an appropriate balance between providing incentives to ensure efficient use of spectrum while guarding against the risks of regulatory failure in setting the reference rate too high? If you consider a different rate would be more appropriate, please provide any evidence that you think we should take into account.

No. Aeronautical spectrum is allocated to the aeronautical industry by international treaty for the purpose of 'safety of life' and is intended to pre-empt any emergency in the first instance. We believe that, as per the Cave Audit, the opportunity cost should be set at zero for the aeronautical spectrum.

Question 12: Do you agree with our initial view that a reference rate of £25k per single MHz of national spectrum would be appropriate for deriving fees for licences to use X band radar?

No. Aeronautical spectrum is allocated to the aeronautical industry by international treaty for the purpose of 'safety of life' and is intended to pre-empt any emergency in the first instance. We believe that, as per the Cave Audit, the opportunity cost should be set at zero for the aeronautical spectrum.

Question 13: Do you agree that, generally, spectrum used by aeronautical radionavigation aids is currently uncongested? Do you believe that this may change during the next few years and, if so, approximately when?

We do not agree. We believe that all radio navigation frequency bands are generally currently congested and efficiency is maximised subject to this demand. This will not change for the foreseeable future.

Question 14: Do you agree with the basis on which Ofcom has arrived at its initial

view on reference rates for aeronautical radionavigation aids?

No. Virgin Atlantic believes that Ofcom have not undertaken a comprehensive consultation process on which it has based its initial view [see Qu 9]. It is inappropriate for Ofcom to seek to apply AIP to the aeronautical spectrum as these frequencies are harmonised globally for civil and military airspace users. The measures proposed by Ofcom will not produce greater spectral efficiency nor, due to international agreements, be able to be reallocated. Safety of life and international obligations should be fully acknowledged by Ofcom.

Conclusion

Virgin Atlantic believes that consultation between Ofcom, Industry and the Regulators to further advance commitments to investment in technology and process improvement would be able to produce greater efficiencies at a fraction of the cost through regulatory changes. Virgin Atlantic does not accept that AIP will bring about the efficiencies that Ofcom foresee.

We believe that the fact that a Regulatory Impact Assessment has not yet been carried out casts doubt on the validity of Ofcom's findings. We seek assurance from Ofcom that a formal, valid Impact Assessment will be carried out. This must give stakeholders the appropriate advice and time to provide input and respond to the results. Ofcom should not continue with the consultation process until this has been achieved.

Ofcom unrealistically suggests that these proposals could have some bearing or influence that would lead to changes to the international agreements on aeronautical spectrum allocations and should understand that it will instead generate resentment and higher costs to an already troubled industry.

There is clearly an environmental angle that needs to be considered too. Airlines may ultimately choose to fly even greater distances to mitigate increased ATS charges. Does Ofcom propose to undertake an assessment of any potential environmental impact?

Ofcom has failed to take into account the work being done by the aviation sector, mostly at a governmental level, to improve air traffic management and efficient use of spectrum. Ofcom must consider the opportunity cost of implementing AIP with regards to these developments and investments.

One further safety issue which is not directly covered by the questions above but which we would wish to highlight is that by increasing the costs incurred by those who voluntarily opt to improve safety through the carriage and use of radio (in those circumstances where it is still optional) Ofcom will, in our view, only serve to further discourage its uptake by General Aviation and have a negative effect on overall safety that can directly impact on Commercial Aviation.

AIP amounts to nothing more than a tax on commercial aviation and Ofcom has been unable to demonstrate any proven benefit that the proposals will bring. It will create competitive distortions and reduce the economic benefits that aviation brings to the UK.

Virgin Atlantic trust that Ofcom will find our comments useful and we would be willing to discuss any of the points made in more detail if that would be helpful.



Kind regards

Nigel Milton

Nigel Milton
Head of Government Affairs